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ABSTRACT

The history of and issues involved in the implementation of a tax appraisal program in West Virginia are highlighted in this paper, with a focus on taxation litigation since 1975. Efforts of the state legislature to implement a uniform tax system since the 1982 "Recht Decision," which found the state school funding system to be unconstitutional, are described. A conclusion is that the tax appraisal program designed to alleviate the woes of elementary and secondary public school funding is no closer to implementation than it was in 1982. Many attempts have been made to satisfy the "Recht" decision, but the controversial issue is yet to be resolved. (16 references) (LMI)

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THE TAX REAPPRAISAL MERRY-GO-ROUND

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The Tax Reappraisal Merry-Go-Round

Introduction

For eight years, the West Virginia state legislature has served as a political battleground as educators and legislators have tried to implement a tax reappraisal program designed to resolve many of the financial woes of the state's secondary and elementary public schools. A landmark decision in 1982, known to West Virginians as the "Recht Decision," ruled the state system of school funding unconstitutional because it created disparities and inequities. [1]

To understand what has taken place in public education and taxation in West Virginia, it is necessary to go back to 1975 and look at the initial stages and ensuing events of Pauley v. Bailey, brought about when the parents of five Lincoln County children filed a decloratory judgment in the circuit court of Kanawha County on behalf of themselves and of all children living in Lincoln County, one of West Virginia's poorest counties. [2] The original judgment named the state treasurer, the state auditor, the state board of education, the state tax commissioner, Lincoln County Board of Education, Superintendent of Lincoln County schools, the county assessor, and the State Superintendent of Schools as co-defendants. [3]

In Pauley v. Bailey the plea for relief by the plaintiffs was very similar to that requested in Rodriquez - Serrano. The Kanawha County Circuit Court dismissed the original Pauley et al v. Kelley et al [So named because Kelley was state treasurer at the time] complaint after noting the Lincoln County school system was inadequate as compared with other West Virginia county school systems. [4]

On February 20, 1979, however, the West Virginia Supreme Court of Appeals reversed the lower court's decision, remanding Pauley v. Kelley to trial court for further evidence. [5] Judge Arthur Recht of the Ohio County Court was appointed to hear the case and give considerable guidance. Judge Recht spent approximately 40 days hearing evidence. The results of the decision, which was handed down in May 1982, were anticipated to be more far-reaching than those of previous court decision dealing with education in cases similar to Rodriquez - Serrano. [6]

In a major attempt to meet the mandates established in Pauley v. Bailey, the legislature restructured the state tax commission. This was probably the most sweeping change which resulted from Pauley v. Bailey and minimized the political power of the 55 local county tax assessors.

Attempts to Implement Reappraisal

Although the Recht Decision accomplished many changes in the State Tax Department, one of the needed changes cited by Judge Recht has not been fully addressed. The governor and legislature in 1983 began the process of implementing the court order, setting into motion a program to reappraise the state's personal and real properties. The legislature appropriated approximately 32 million dollars to up-date the statewide property reappraisal program. At stake was $350 million which is earmarked for the state's 55 school districts. But the program and the date to implement reappraisal values soon became political footballs.

With the passage of three major pieces of legislation, it appeared that the West Virginia legislature wanted the blessings of the people on their efforts to improve finance efforts to fund public education. Legislators presented to the citizens of the State Joint Resolution 4 for

ratification on November 6, 1984. The major provision of the amendment was to establish a statewide 100 percent excess levy to create quality education.[7] Amendment 4 was soundly defeated: The failure of the voters to pass a statewide levy to tax themselves sent an explicit message to the legislature. The people wanted local control of taxes.

A review of the legislature in 1985 reflected the mood of the citizens in their defeat of Senate Joint Resolution 4. Taking its clue from that vote, the legislature passed no major legislation which addressed the direction of the Recht Decision.

However, the West Virginia legislature seemed to develop new courage during its 1986 session when it again attempted to deal with property tax reappraisal in House Bill 153. The legislature rewrote a section of the West Virginia code, entitled 11-1B-18, which outlined the dutles of the tax commissioner, assessors, sheriffs and county commissioners in their roles to update the valuation of property. Although House Bill 153 addressed several issues relating to review of property appraisals, its major purpose was to find a date to implement the statewide appraisal and reappraisal of property subject to ad valorem taxation.

Some who observed the development of House Bill 153 argued that the legislature was again trying to get away from the issue of implementing the reappraisal. The members of the legislature, however, responded they had set a date for implementation and thus had faced the issue squarely. Unfortunately, 11-1B-18 contained nebulous language. as a result, the bill never achieved its purpose.

In another attempt to address the issue of how best to develop a uniform tax system, the 1987 West Virginia legislature developed House

Bill No. 29, an amendment to the constitution of the state of West Virginia, to be voted on in March, 1988. The bill was designated as the Uniform School Funding Amendment and addressed the issue of the county excess levy, initially raised by the Recht Court. [8]

The 1987 legislature realized early in the session that the time period for county commissioners to hear appeals of real property reappraisal was too short. The legislature attempted to broach again the issue on property reappraisal with Senate Bill 276 which extended the time frame for certain procedural steps to insure timely completion of the appeals process. [9]

Unfortunately, the date passed for the state tax commissioner to submit his report that the reappraisal of the real property was substantially completed. Another attempt to implement tax reappraisal, long anticipated as the basic need to help solve the financial problems of the state's public school districts, had again failed to reach friction.

The attempts of the legislature to meet Recht's mandate had been ineffective. The personalities involved in all aspects of the case seemed to be in a constant state of flux. The combination of diverse groups and self serving individuals and the disinclination of the taxpayers to support any changes in the tax structure of the state provided the proper setting for a statement.

After the failure of the legislature and the State Tax Commissioner to implement reappraisal, it became necessary for Judge Jerry Cook, who had been presiding over the 25th circuit court comprised of Boone and Lincoln Counties, to become actively involved. Tapped to fill the appointment previously held by Recht, Cook did not become an active participant in the case until June 29, 1987. Cook

ordered the legislature to provide an adequate remedy to replace or equalize the excess levy by July 1, 1988. It was his intent to give the legislature enough time to resolve the conflict. Judge Cook decided on June 29, 1987, to issue an order in response to Janet Pauley, et al, plantiff, versus Glen B. Gainer, Jr. et al defendant. [10]

Dr. Tom McNeel, State Superintendent of schools issued a memorandum on August 31, 1987 clarifying Cook's order. In it he agreed with Judge Cook that the Uniform School Funding Amendment was crucial to the West Virginia public school system because it would provide fairness in taxation to the taxpayers of the state. McNeel's clarification and support they related to the statewide special amendment vote scheduled for Saturday, March 5, 1988, appeared to be necessary for the citizens of the state because of the controversy generated by the amendment. [11]

The attempts made by Cook and McNeel proved futile. The voters of the state were not of the same opinion as the court as they again sent a message to the courts and the legislature by defeating the uniform school funding amendment 56 percent to 44 percent on Saturday, March 5, 1988. The failure of the amendment was a major blow to the educational community, which had given major support to its passage. According to Senate educational chairman Burdette the regular session of the 1988 West Virginia legislature again saw as the "biggest sticking point in March" the issue of implementation of the property reappraisal issue. [12] The legislature again found ways to avoid dealing with the issue of property reappraisal. Governor Moore, in his state of the state address, gave notice to the legislature that he would call a special

session of the legislature after the close of the regular session of the legislature to deal with education issues.

In this special session of the legislature the law makers were able to agree on a 173 page measure dealing with statewide educational issues. In addition, the House and Senate conferees also stripped a provision from the bill that would have implemented the state's controversial property reappraisal program, a move that would have dispersed millions of dollars of anticipated new local revenue to the 55 county school systems. [13]

Ironically, the same body which gave direction and definition to Arthur Recht some eight years earlier, overturned a crucial portion of his decision and "reversed a judicial order to seize and redistribute counties excess levies for schools. [14]

The court, however, did recognize the need for funding and encouraged the Kanawha County Court to implement the beleaguered statewide reappraisal program.

The property tax reappraisal program appeared briefly in the 1989 West Virginia legislature when House Speaker Chuck Chambers asked the legislature to recycle a proposal allowing the state tax commissioner to implement the property tax reappraisal. Chambers was responding to an opinion of the attorney general, who had ruled that the $350 million reappraisal could not be put in place without further legislative action.[15]

Conclusion

The 1989 West Virginia legislature successfully avoided dealing with the implementation of the property tax reappraisal issue. This legislature drafted a proposal that set no deadlines. It would have allowed the tax commissioner to put reappraisal in place in July after he certified the program was substantially correct. But even this proposal ran into difficulty after delegates and senators stated they would use parliamentary tactics to tie up the legislature during last days of the session if the leadership reported the reappraisal bill to the floor.

Tax Commissioner Charles Lorensen told House Judiciary Committee members he would have the authority to implement the program, if the legislature would remove the 1987 date. Lorensen stated "the property tax administration in this state is in turmoil". He added the property reappraisal program "would remedy this situation". But the 1989 legislature was granted another reprieve from dealing with the issue of reappraisal directly when Governor Caperton informed legislative leaders he would delay implementing property tax reappraisal until July 1, 1990. With that delay, the program would not be reflected on tax tickets until the 1991 tax year. [16] And so the tax reappraisal program designed to resolve the financial woes of funding elementary and secondary public schools in West Virginia is really no closer to being realized and implemented than it was eight years ago. Many attempts to satisfy the mandate in the Recht decision have been made but the controversial issue continues to be a political merry-go-round.

Footnotes

1. "Excess Levies Declared Illegal" The Evening Journal. November 25, 1988. Martinsburg, WV. p. 1

2. Pauley, et al, v. Kelley, et al, Civil Action Circuit of Kanawha County 255 SE ed. p. 5

3. I.B.I.D. p. 5

4. Pauley v. Bailey, Civil Action No 75-1268. Circuit of Kanawha County, 1982. p. 7

5. Roy Truby. "Pauley v. Bailey and the West Virginia Master Plan." Phi Delta Kappan. Vol. 15 No 4 Dec., 1983. p. 284

6. Arthur Recht. "Constitution Provisions Guide Direction of Education in West Virginia" address given at West Virginia School Boards Association/West Virginia School Administrators Meeting, Wheeling, West Virginia, May 6, 1984.

7. Senate Joint Resolution No 4 (West Virginia)

8. House Bill No 29. Informal Guidelines for Implementing Public Education Bills enacted in 1987. West Virginia Department of Education, Charleston, WV. p. 1

9. NcNeel, Tom. State Superintendent of Schools Interpretation Memorandum, West Virginia Department of Education, Charleston, West Virginia, August 31, 1987.

10. Pauley et al v. Gainer, et al Civil Action No. 75-1268 Kanawah County, West Virginia, Charleston, West Virginia, June 29, 1987, p.1

11. McNeel, Tom. MEMORANDUM. Op.ct. p. 2

12. Forkes, Brian. "Constitutionality of Education Reform Not Settled, Senator says", The Charleston Gazette, Saturday, June 25, 1988, p. 1

13. Informal Guidelines for Implementing Public Education Bill Enacted in 1988, West Virginia Department of Education, Charleston, West Virginia, Senate Bill No 14, passed June 27, 1988.

14. Curtis Austin. "Ruling Out Part of Recht Case Met With Delight." The Charleston Gazette, November 25, 1988. p. 1

15. "New Reappraisal Proposal Drafted." The Evening Journal, Martinsburg, West Virginia, March 29, 1989. p. 2

16. "Target Date Is Mid 1990" The Evening Journal, Martinsburg, West Virginia, April 1, 1989. p. 1

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